

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Property Maintenance Corporation and International Union, United Plant Guard Workers of America, Amalgamated Local No. 451. Cases 5-CA-28677 and 5-CA-29348

July 23, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN
AND WALSH

Upon a charge and an amended charge filed in Case 5-CA-28677 on November 15 and December 13, 1999, and a charge filed in Case 5-CA-29348 on November 9, 2000, by International Union, United Plant Guard Workers of America, Amalgamated Local No. 451 (the Union), the Acting General Counsel of the National Labor Relations Board issued a consolidated complaint on March 29, 2001, against Property Maintenance Corporation (the Respondent), alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). Although properly served copies of the charges and complaint, the Respondent failed to file an answer.

On June 1, 2001, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On June 11, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated April 27, 2001, notified the Respondent that unless an answer was received by May 11, 2001, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the Acting General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Virginia corporation with a facility in Roanoke, Virginia, has been engaged in supplying security services to the United States Coast Guard at the U.S. Coast Guard Reserve Training Center, Yorktown, Virginia. During the 12 months preceding the issuance of the complaint, the Respondent, in its performance of services described above, derived gross revenues in excess of \$50,000, and purchased and received at its Roanoke, Virginia facility products, goods, and materials valued in excess of \$5000 directly from points located outside the State of Virginia. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

All full-time and/or regular part-time security officers performing guard duties as defined in Section 9(b)(3) of the National Labor Relations Act, as amended; but excluding all office clerical employees, professional employees, supervisors as defined in the Act, and all other employees.

Since about January 25, 1991, the Union has been the designated exclusive collective-bargaining representative of the unit, and has been recognized as the representative by the Respondent.

This recognition has been embodied in a series of collective-bargaining agreements between the Respondent and the Union, the most recent of which is effective by its terms from June 9, 1998, to June 9, 2001 (the 1998 agreement).

At all times since on or about January 25, 1991, based on Section 9(a) of the Act, the Union has been the collective-bargaining representative of the unit.

On or about October 26, 1999, the Union filed grievance No. 3 alleging that the Respondent changed employees' scheduled days off.

On or about November 22, 1999, the Union filed grievance No. 10 alleging that the Respondent wrongfully suspended a unit employee and requesting that the Respondent provide information relating to the suspension.

Since approximately November 1999, the Union has requested that the Respondent bargain collectively and meet with the Union to discuss and process the above grievances Nos. 3 and 10, pursuant to the 1998 agreement, and since that same period, the Respondent has failed and refused to meet and process grievances Nos. 3 and 10 under the 1998 agreement.

Since about November 22, 1999, the Respondent has failed and refused to provide information as requested in grievance No. 10 relating to the Respondent's suspension of a unit employee.

Article XXXI, section 1, of the 1998 agreement provides that the Employer shall pay to guard (officer) bargaining unit employees an increase in wage rate from \$9.38 to \$9.63 per hour, effective October 1, 2000.

Article XXXI, section 2, of the 1998 agreement provides that the Respondent shall pay to guard (officer) bargaining unit employees a \$2.16, per-hour rate, in lieu of benefits, in addition to the basic established hourly rate as mentioned above, effective October 1, 2000.

Since about October 1, 2000, the Respondent has refused to pay the basic hourly wage rate increases and the \$2.16 rate in lieu of fringe benefits required by the 1998 agreement.

The subjects described above relate to the wages, hours, and other terms and conditions of employment of the unit, and are mandatory subjects for the purposes of collective bargaining.

On or about October 23, 2000, the Union filed grievance No. 24-2000 alleging that the Respondent failed to pay the October 1, 2000 pay rates, as required under the 1998 agreement, and since October 23, 2000, the Respondent has failed and refused to meet and process grievance No. 24-2000 pursuant to the 1998 agreement.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing since October 1, 2000, to pay unit employees the contractual wage rate increase from \$9.38 to \$9.63 per hour, pursuant to article XXXI, section 1 of the

1998 agreement, and to pay unit employees the \$2.16 per-hour rate, in lieu of benefits, pursuant to article XXXI, section 2, of the agreement, we shall order the Respondent to comply with the agreement and to make whole the unit employees for all losses incurred, with interest. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 293 NLRB 1173 (1987).

In addition, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to process grievances Nos. 3, 10, and 24-2000, and by refusing to provide the Union with the information it requested in grievance No. 10 relating to the Respondent's suspension of a unit employee, we shall order the Respondent to meet with the Union and process grievances Nos. 3, 10, and 24-2000, and to provide the information requested by the Union regarding grievance No. 10.

ORDER

The National Labor Relations Board orders that the Respondent, Property Maintenance Corporation, Roanoke, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to abide by the terms of the 1998-2001 collective-bargaining agreement with International Union, United Plant Guard Workers of America, Amalgamated Local No. 451, covering the employees in the following unit by failing to pay unit employees, effective October 1, 2000, hourly wage rate increases as required under article XXXI, section 1 of the agreement, and to pay the \$2.16 per-hour rate, in lieu of benefits, in addition to the basic established hourly rate, as required by article XXXI, section 2 of the agreement. The unit is:

All full-time and/or regular part-time security officers performing guard duties as defined in Section 9(b)(3) of the National Labor Relations Act, as amended; but excluding all office clerical employees, professional employees, supervisors as defined in the Act, and all other employees.

(b) Refusing to meet with the Union and process grievances pursuant to the 1998-2001 agreement.

(c) Failing to provide the Union with information requested by it in connection with grievances filed pursuant to the agreement.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Abide by the 1998–2001 collective-bargaining agreement by paying unit employees the increase from \$9.38 to \$9.63 in the guard (officer) hourly wage rate effective October 1, 2000, pursuant to article XXXI, section 1, of the agreement, and by paying unit employees the \$2.16 per-hour rate, in lieu of benefits, in addition to the basic hourly rate, pursuant to article XXXI, section 2 of the agreement, effective October 1, 2000.

(b) Make unit employees whole for any losses suffered as a result of the Respondent's failure to pay the contractually required hourly wage rates effective October 1, with interest, as set forth in the remedy section of this decision.

(c) Meet with the Union and process grievances Nos. 3, 10, and 24–2000, pursuant to the terms of the collective-bargaining agreement.

(d) Furnish the Union with the information it requested on November 22, 1999, with regard to grievance No. 10.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Roanoke, Virginia, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 1999.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

¹ If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. July 23, 2001

Peter J. Hurtgen, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the

National Labor Relations Board

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to abide by the terms of the 1998–2001 collective-bargaining agreement with International Union, United Plant Guard Workers of America, Amalgamated Local No. 451, covering the employees in the following unit by failing to pay unit employees, effective October 1, 2000, hourly wage rate increases as required under article XXXI, section 1 of the agreement, and the \$2.16 per-hour rate, in lieu of benefits, in addition to the basic established hourly rate, as required by article XXXI, section 2 of the agreement. The unit is:

All full-time and/or regular part-time security officers performing guard duties as defined in Section 9(b)(3) of the National Labor Relations Act, as amended; but excluding all office clerical employees, professional employees, supervisors as defined in the Act, and all other employees.

WE WILL NOT refuse to meet with the Union and process grievances pursuant to the 1998–2001 agreement.

WE WILL NOT fail to provide the Union with information requested by it in connection with grievances filed pursuant to the agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL abide by the 1998–2001 collective-bargaining agreement by paying unit employees the increase from \$9.38 to \$9.63 in the guard (officer) hourly wage rate effective October 1, 2000, pursuant to article XXXI, section 1, of the agreement, and by paying unit employees

the \$2.16 per-hour rate, in lieu of benefits, in addition to the basic hourly rate, pursuant to article XXXI, section 2 of the agreement, effective October 1, 2000.

WE WILL make unit employees whole for any losses suffered as a result of our failure to pay the contractually required hourly wage rates effective October 1, with interest.

WE WILL meet with the Union and process grievances Nos. 3, 10, and 24–2000, pursuant to the terms of the collective-bargaining agreement.

WE WILL furnish the Union with the information it requested on November 22, 1999, with regard to grievance No. 10.

PROPERTY MAINTENANCE CORPORATION